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2022-07-11

### Ross v. Grant

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART H

..... X  
LESLINE ROSS,

Petitioner,

INDEX NO.: L&T 076183/2019

-against-

**DECISION/ORDER**

ANITA GRANT  
618 ASHFORD STREET  
2<sup>nd</sup> FLOOR  
BROOKLYN, NY 11207

Respondent.

..... X

**HON. HANNAH COHEN**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
Petitioner’s Order to Show Cause to execute upon the warrant.

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause	1
Opposition	2

Upon the foregoing cited papers, the Decision and Order on this order to show cause is as follows:

Petitioner, Lesline Ross, commenced this holdover proceeding to regain possession of the premises in 2019 after service of a ten-day notice to quit. Respondent appeared with counsel and entered a final judgment of possession, warrant to issue forthwith, execution stayed through January 31, 2020. On January 27, 2020, Respondent filed an order to show cause which was withdrawn. Respondent filed a second order to show cause seeking a stay of the execution of the

warrant pursuant to RPAPL 749(3), as Respondent is a disabled senior and required additional time to seek a new apartment. Said order to show cause was returnable on March 25, 2020. The court subsequently closed on March 17, 2020, due to the COVID-19 pandemic. In response to the COVID-19 pandemic, the Chief Administrative Judge and Supervising Judge of the Civil Court of New York issued a series of administrative orders (“AO’s”) and directives (“DRP’s”). On August 12, 2021, Respondent filed for the Emergency Rental Assistance Program (ERAP). It is undisputed that ERAP paid arrears in the amount of \$8,400.00 for the period of December 2020 to November 2021, and that Petitioner accepted this ERAP payment. On February 10, 2022, Respondent moved to vacate the stipulation of settlement dated October 8, 2019. This motion was denied by the Court as the Respondent had not enumerated any legal grounds to invalidate the so-ordered stipulation.

On June 9, 2022, Petitioner submitted an Order to Show Cause to Accelerate the Court Date. Petitioner also asks permission be given to execute the warrant because the case and eviction started before the pandemic and Petitioner no longer desires to accept ERAP. Respondent opposes Petitioner’s Order to Show Cause as Petitioner accepted ERAP payment on behalf of Ms. Grant, and therefore cannot evict the Respondent based on twelve months following acceptance of payment as this case does not meet any of the ERAP Statute exceptions.

Pursuant to COVID-19 ERAP of 2021 [L.2021, N.Y. Ch. 56], acceptance of payment of rent of rental arrears from ERAP constitutes an agreement by the recipient landlord or property owner “not to evict for reason of expired lease or holdover tenancy on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received...” There is an exception if the building contains four or fewer units, or the landlord intends to immediately occupy a unit for personal use, however, neither exception is applicable in this case (*see id.*). Courts have held that a landlord is entitled to vacate a stay imposed by ERAP in a

holdover proceeding following service of a notice of terminating the tenancy when the landlord had sworn that the landlord would not accept ERAP money and the maintenance of the stay at that juncture was prejudicial and served no discernable legal purpose (*178 Broadway Realty Corp. v Charles*, 2022 N.Y. Misc. LEXIS 2184 (N.Y. Civ. Ct. 2022)).

Here, it is undisputed that the Petitioner accepted arrears paid by ERAP in the amount of \$8,400.00 for the period of December 2020 to November 2021 (*see* L.2021, N.Y. Ch. 56). This situation does not fall into either exception named in COVID-19 ERAP of 2021, therefore a stay of 12 months after the first rental assistance payment was received is in place (*see id.*). When constructing a statute, the court must conclude that the legislature deliberately placed wording to serve its intended purpose (*see Rodriguez v. Perales*, 86 NY2d 361 [1955]; *Bitzarkis v. Evans*, 2021 NY Slip Op 21280 [Civil Ct Kings Co November 2021]). Had the legislature intended either party to have the option of non compliance with ERAP provisions after receiving ERAP funds, the statute would have stated. The landlord accepted the ERAP money and did not swear to not accept it prior to receiving it nor has she returned the funds (*see 178 Broadway Realty Corp*, 2022 N.Y. Misc. (N.Y. Civ. Ct. 2022)). The herein stay is neither prejudicial nor lacks legal purpose. Based upon the above, Petitioner's Order to Show Cause is denied with leave to renew after the twelve-month period has expired.

This constitutes the decision and order of this Court.

Dated: July 11, 2022

Brooklyn, New York

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Hon, Hannah Cohen, J.H.C.